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CITY OF PORTSMOUTH *v.* HOUSEMAN.

June 10, 1909

[65 S. E. 11.]

1. Municipal Corporations (§ 806*)—Sidewalks—Duty of Pedestrian to Look for Dangers.—A pedestrian exercising ordinary care in walking on a sidewalk is not required to anticipate danger or to be on the lookout for it, but may presume that the city has done its duty in keeping its sidewalks in order.

Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1678, 1682; Dec. Dig. § 806.* 12 Va.-W. Va. Enc. Dig. 916.]

2. Municipal Corporations (§ 807*)—Sidewalks—Duty of Pedestrian to Use Safe Portion.—If there is a defective place in a sidewalk, but a sufficient space for a person to pass in safety by the exercise of ordinary care, it is his duty to take the safe route.

Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1679-1681; Dec. Dig. § 807.* 12 Va.-W. Va. Enc. Dig. 921, 922.]

3. Appeal and Error (§ 842*)—Review—Verdict Clearly Wrong.—While the jury are the triers of facts, the judges of the credibility of witnesses, and of the weight of testimony, and while the jury's finding of facts is entitled to great respect and the refusal of the trial judge to interfere with a jury finding is entitled to great weight with an appellate court, yet, where the verdict is plainly against the law as applied to the facts found, the appellate court will reverse the judgment, and direct a new trial.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. §§ 3316-3330; Dec. Dig. § 842.* 1 Va.-W. Va. Enc. Dig. 620, et seq.]

4. Municipal Corporations (§ 762*)—Defective Sidewalks—Liability—Notice of Defect.—A city is not liable for an injury from a defect in a sidewalk or street unless the defect was created by the city or with its knowledge, actual or constructive, and it was negligent in not repairing it within a reasonable time after it knew or should have known thereof.

Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1605-1611; Dec. Dig. § 762.* 12 Va.-W. Va. Enc. Dig. 903, et seq.]

5. Municipal Corporations (§ 821*)—Defective Sidewalk—Action for Injuries—Questions of Law and Fact—Reasonable Time to Make Repairs.—What is a reasonable time within which a municipal corporation must repair a defective sidewalk after it knows or should have known of the defect so as to escape being negligent is a mixed question of law and fact, but it is not an arbitrary right of the jury to say in an action for injuries for such a defect what is a reasonable time, though they may from the facts be warranted in finding that the defect existed, and that it caused the injury.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

[Ed. Note.—For other cases, see *Street Railroads*, Cent. Dig. §§ 1745-1750; Dec. Dig. § 821.* 12 Va.-W. Va. Enc. Dig. 905, 925.]

6. Negligence (§ 136*)—Actions—Question for Jury.—The essential feature in cases where damages may be recovered for an injury is defendant's negligence as the proximate cause of the injury, and, where there is evidence sufficient to fix actionable negligence upon defendant, whether it was the proximate cause of the injury becomes purely a question of fact.

[Ed. Note.—For other cases, see *Negligence*, Cent. Dig. §§ 292, 297, 300, 327-332; Dec. Dig. § 136.* 12 Va.-W. Va. Enc. Dig. 913, 925.]

7. Municipal Corporations (§ 817*)—Defective Sidewalks—Negligence—Presumptions.—Negligence cannot be presumed from the absence of evidence, and, when constructive notice is relied upon to show negligence, facts upon which the notice may be reasonably presumed must be proved by satisfactory evidence, and hence it will not be presumed that officers of a city charged with the duty of observing and reporting defects in streets neglected their duty from the fact that a patrolman in whose beat an accident occurred from an alleged defective sidewalk was permitted by the city to leave the jurisdiction of the court without testifying in an action against the city for the injury.

Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 1725; Dec. Dig. § 817.* 12 Va.-W. Va. Enc. Dig. 904, 905, 926.]

8. Municipal Corporations (§ 791*)—Defective Sidewalks—Reasonable Time to Repair.—A defect in a sidewalk consisting of a cover to a catch-basin partly removed continuing from 12 o'clock noon until 9 o'clock p. m., when a person was injured thereby, had not existed long enough to impute to the city constructive knowledge thereof and negligence in not having it remedied.

Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1647-1651; Dec. Dig. § 791.* 12 Va.-W. Va. Enc. Dig. 905.]

Judgment reversed and remanded for new trial. Keith, P., absent.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

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